

# CRS Report for Congress

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## **Summary of State Breastfeeding Laws and Related Issues**

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# Summary of State Breastfeeding Laws

## Summary

The practice of breastfeeding has expanded in recent years. Various legal issues have accompanied this development. The primary legal issues concern: 1) the ability of working mothers to breastfeed their children and/or to express milk during working hours; and 2) the nursing and/or expression of milk in public or semi-public places such as restaurants, public transportation facilities, and other locations where the public is present. Certain States have enacted legislation addressing breastfeeding in the workplace and exempting nursing mothers from laws dealing with indecent exposure and/or criminal behavior. Some States have enacted laws which excuse nursing mothers from jury service. State laws vary considerably in their scope and coverage. This report summarizes the various State laws concerning breastfeeding. Congress, in various appropriations measures, has affirmed a woman's right to breastfeed her child in any location in a Federal building or on Federal property, where the woman and child are authorized to be. The current federal legislative proposals concerning breastfeeding are briefly examined in the report.

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# Summary of State Breastfeeding Laws

## Introduction

One of the stated objectives of the U.S. Public Health Service, as outlined in their report *Healthy People 2010*, is to increase the proportion of mothers who breastfeed their children.<sup>1</sup> The national objective set forth in the report is to strive for a 75% participation rate of nursing mothers in the early postpartum period, a 50% participation rate of nursing mothers in the period after the infant reaches six months of age, and a 25% participation rate of nursing mothers at the age of one year.

Research has indicated that the special composition of human milk enhances cognitive and visual development and lowers the risk and severity of a variety of acute childhood illnesses and chronic diseases, including diarrhea, lower respiratory infection, otitis media, bacteremia, bacterial meningitis, urinary tract infection, necrotizing enterocolitis, lymphoma, and digestive diseases.<sup>2</sup> Research has also demonstrated health benefits to mothers who breastfeed, such as reduced risk of breast and ovarian cancer and osteoporosis.<sup>3</sup>

Because of the growing incidence of women in the workforce, certain issues have arisen concerning working mothers and breastfeeding. It may be necessary for a working mother to express<sup>4</sup> milk during working hours, and/or to breastfeed her child during working hours. Other issues concern the nursing and/or expression of milk in public or semi-public places such as restaurants, public transportation facilities, and other locations where the public is present. Controversies concerning nursing mothers and places of employment and public accommodation and other public areas have arisen, and numerous legal issues remain unresolved and uncertain.<sup>5</sup>

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<sup>1</sup> *Healthy People 2010*, Washington, DC: U.S. Department of Health and Human Services, Public Health Service (2000).

<sup>2</sup> See American Academy of Pediatrics homepage at: <http://www.aap.org/advocacy/bf/brhist.htm>.

<sup>3</sup> *Id.*

<sup>4</sup> A nursing mother “expresses” or extracts breast milk through a vacuum pump device for later feeding to the child.

<sup>5</sup> For example, a Borders bookstore employee requested a nursing mother to leave. Later, the company privately settled a lawsuit with the mother and affirmed that nursing mothers were welcome in their stores worldwide. Betsy Hart, *And Now, Breast-Feeding Rights?*, Scripps Howard News Service (April 4, 2002). Hilary Von Rohr, Note, *Access to Justice: The Social Responsibility of Lawyers: Recent Development: Lactation Litigation and the ADA Solution: A Response to Martinez v. NBC*, 4 Wash. U.J.L. & Pol’y 341 (2000); Shana (continued...)

*Development of State Breastfeeding Laws—1993 to the Present Day*

As breastfeeding has become more common, various legal concerns have arisen such as whether certain State decency laws and other laws concerning public nudity and exposure might be inappropriately applied against nursing mothers in public and/or semi-public places. Because of these concerns, a wide range of State laws have been enacted to deal with issues involving various aspects of breastfeeding. The first State to enact comprehensive breastfeeding legislation was Florida in 1993.<sup>6</sup> This legislation removed breastfeeding from the criminal statutes and created a new law that stated that breastfeeding was an important and basic act of nature that needed to be encouraged in the interests of maternal and child health. The law provided that a woman had a right to breastfeed in any place where she had a right to be. This legislation served as a model for legislation subsequently enacted by other States. In 1994, Florida enacted the first State legislation that examined the importance of breastfeeding mothers having the support and cooperation of their employers when they returned to work.<sup>7</sup> While this law did not require all employers to accommodate nursing mothers (such as providing for a location to lactate), it set out the reasons why breastfeeding was very important. The law also established a study to look at the feasibility of breastfeeding guidelines for employers.

Most of the State breastfeeding laws permit mothers to breastfeed in any public or private location and/or provide that breastfeeding does not constitute indecent exposure, or other criminal behavior. Some States have vested nursing mothers with certain rights, including rights in the workplace. For example, Hawaii prohibits employers from discriminating against a mother who breastfeeds or expresses milk at the workplace. Other States exempt nursing mothers from jury service. The current body of State breastfeeding laws varies from jurisdiction to jurisdiction. At the current time, thirty-four States have some type of legislation dealing with the protection and/or the promotion of breastfeeding.

*Federal Legislation*

In recent years, Congress has enacted legislation which affirmed the right of a woman to breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at that location.<sup>8</sup> This legislation was first enacted in 1999, and has been repeatedly placed

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<sup>5</sup> (...continued)

M. Christrup, *Breastfeeding in the American Workplace*, 9 Am. U.J. Gender Soc. Pol'y & L. 471 (2001).

<sup>6</sup> 1993 Fla. Laws ch. 4, Fla. HB 231. Originally codified at Fla. Stat. § 383.015, §§ 800.02 to 800.04, § 847.001. See below for current codification.

<sup>7</sup> 1994 Fla. Laws ch. 217, Fla. SB 1668. Codified at Fla. Stat. §§ 383.011, 383.015, 383.016, 383.311, 383.318.

<sup>8</sup> See discussion below.

in appropriations legislation. The most recent provision affirming nursing on Federal property was enacted on January 23, 2004.<sup>9</sup>

Legislation has been introduced in the 108<sup>th</sup> Congress for the protection of breastfeeding mothers and for the encouragement of breastfeeding. S. 418, the “Pregnancy Discrimination Act Amendments of 2003,” was introduced by Senator Olympia J. Snowe and would amend the Civil Rights Act of 1964 by adding provisions dealing with breastfeeding. H.R. 2790, the Breastfeeding Promotion Act was introduced by Representative Carolyn B. Maloney and would amend the Civil Rights Act to protect breastfeeding by new mothers; provide tax incentives for businesses that establish private, lactation areas in the workplace; establish a performance standard for breast pumps; and allow breastfeeding equipment to be tax deductible for families.

In addition to these bills, several other bills in the 108<sup>th</sup> Congress make indirect reference to breastfeeding within the context of the use of mercury in dental fillings, the prevention of HIV transmission, and mercury ingestion through seafood consumption.

### *Purpose of the Report*

The purpose of this report is to summarize the various State laws concerning breastfeeding.<sup>10</sup> Each law is cited and is followed by a brief summary of its provisions. The report does not cover certain commemorative State legislation relating to breastfeeding.<sup>11</sup> A chart has been prepared summarizing the existing State breastfeeding laws and grouping the laws into six categories. Pending federal legislation and previously enacted federal legislation concerning breastfeeding is summarized.

## **Summary of State Breastfeeding Legislation**

### **Alaska**

*Alaska Stat. § 01.10.060 (Michie 2000)* provides that in the laws of the State, “lewd conduct,” “lewd touching,” “immoral conduct,” “indecent conduct,” and similar terms do not include the act of a woman breastfeeding a child in a public or private location where the woman and child are otherwise authorized to be.

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<sup>9</sup> Pub. L. 108-199, 118 Stat. 3, § 629 (Jan. 23, 2004).

<sup>10</sup> Puerto Rico has been included in this analysis.

<sup>11</sup> For example, States may have enacted legislation designating a certain day as “Breastfeeding Day.” E.g., Cal. Assembly Con. Res. 95 (1996) proclaimed the week of August 1 through 7, 1996, as “Breastfeeding Awareness Week.”

*Alaska Stat. § 29.25.080 (Michie 2000)* provides that breastfeeding does not constitute indecent exposure or other similar offenses in any public or private location. A municipality, borough, or other local government unit cannot implement ordinances banning breastfeeding, or making it a violation of a municipal ordinance.

## California

*Cal. Labor Code § 1030 (West 2002)* requires that employers shall provide break time for an employee to express milk for the employee's infant child. The break time, if possible, is to run concurrently with any break time already provided to an employee.

*Cal. Labor Code § 1031 (West 2002)* requires that an employer makes reasonable efforts to provide the employee(s) with a room or a location other than a toilet stall, for the employee to express milk in private.

*Cal. Labor Code § 1032 (West 2002)* states that an employer is not required to provide break time if "to do so would seriously disrupt the operations of the employer."

*Cal. Labor Code § 1033 (West 2002)* provides a civil penalty and for the issuance of a citation by the Labor Commissioner. Violations of these provisions relating to breastfeeding are not considered misdemeanors.

*Cal. Civil Proc. Code § 210.5 (West 2002)* permits the mother of a nursing child to postpone jury duty for one year and explicitly eliminates the requirement for the mother to have to appear in person to request the postponement. The one year period may be extended upon the written request of the mother.

*Cal. Health and Safety Code § 1647 (West 2002)* provides that the procurement, processing, distribution, or use of human milk for human consumption constitutes the rendition of a service.

*Cal. Civil Code § 43.3 (West 2002)* provides the authority for a mother to breastfeed her child in any location.

*Cal. Health and Safety Code §§ 123360, 123365 (West 2002)* mandates the State Department of Health and Human Services to promote breastfeeding in public health campaigns and requires hospitals to provide lactation support and consultation to patients.

*Cal. Assembly Con. Res. 155 (1998)*<sup>12</sup> encourages the State and private employers to support and encourage the practice of breastfeeding by striving to accommodate the need of employees, and by ensuring that employees are provided with adequate facilities for breastfeeding and expressing milk for their children. The

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<sup>12</sup> Provision not codified at this time.

governor is authorized to declare by executive order that all State employees be provided with adequate facilities for breastfeeding and expressing milk.

*Cal. Rules of Court R. 859 (2003)* provides that a mother breastfeeding a child may request that jury service be deferred for up to one year, and may renew that request as long as she is breastfeeding. If the request is made in writing, under penalty of perjury, the jury commissioner must grant the request without requiring the prospective juror to appear in court.

## Connecticut

*Conn. Gen. Stat. Ann. § 31-40w (West 2003)* concerns breastfeeding in the workplace. Employers are required to provide reasonable time and private accommodations each day to an employee who needs to express breast milk for her infant child.

*Conn. Gen. Stat. Ann. §46a-64(a)(3)(West 2002)* forbids resorts and other places of public accommodations from limiting or restricting a mother's right to breastfeed.

*Conn. Gen. Stat. Ann. §53-34b(West 2001)* states that no person may restrict or limit the right of a mother to breastfeed her child.

## Delaware

*Del. Code Ann. tit. 31 § 310 (2002)* provides that a mother is entitled to breastfeed her child in any location of a place of public accommodation wherein the mother is otherwise permitted.

## Florida

*Fla. Stat. Ann. § 383.011 (West 2002)* provides for programs for the encouragement of breastfeeding.

*Fla. Stat. Ann. § 383.015 (West 2002)* permits a mother to breastfeed in any public or private location. A facility may be designated "baby-friendly" if it establishes a breastfeeding policy.

*Fla Stat. Ann. § 383.016 (West 2002)* authorizes the use of a "baby friendly" designation for certain facilities supporting breastfeeding.

*Fla. Stat. Ann. § 383.311 (West 2002)* establishes education and orientation centers dealing with the encouragement of breastfeeding.

*Fla Stat. Ann. § 383.318 (West 2002)* establishes birth centers dealing with instruction in breastfeeding.



*Fla. Stat. Ann. § 800.02 (West 2000)* exempts breastfeeding from the definition of an unnatural and lascivious act.

*Fla. Stat. Ann. § 800.03 (West 2000)* exempts breastfeeding from a statute dealing with the exposure of sexual organs.

*Fla. Stat. Ann. § 800.04(8) (West 2002)* exempts breastfeeding from a statute dealing with lewd or lascivious offenses.

*Fla. Stat. Ann. § 827.071 (West 2002)* provides that a mother's breastfeeding of her baby does not constitute "sexual conduct" within the context of child abuse statutes.

*Fla. Stat. Ann. § 847.001 (West 2002)* provides that a mother's breastfeeding of her baby is not under any circumstance "harmful to minors."

## Georgia

*Ga. Act. No. 922 (S.B. 221)(2002)*<sup>13</sup> provides that the breastfeeding of a baby is an important and basic act of nurture which should be encouraged in the interests of maternal and child health. A mother may breastfeed her baby in any location where the mother and baby are otherwise authorized to be. The legislation completely amends existing Ga. Code Ann. § 31-1-9 (2001).

*Ga. Code Ann. § 34-1-6 (2001)* permits employers to provide reasonable, unpaid break time for employees to express breast milk and provides that employers may make reasonable efforts to provide a private location other than a toilet stall for an employee to express milk.

## Hawaii

*Hawaii Rev. Stat. Ann. § 378-2(7) (Michie 2002)* provides that it shall be an unlawful or discriminatory practice for an employer or labor organization to refuse to hire or discharge from employment, or otherwise penalize a lactating employee because the employee breastfeeds or expresses milk at the workplace.

*Hawaii Rev. Stat. Ann. § 378-10.2 (Michie 2002)* provides that no employer shall prohibit an employee from expressing breastmilk during any meal period or other break period required by law to be provided by the employer or required by a collective bargaining agreement.

*Hawaii Rev. Stat. Ann. §§ 489.21 to 489.23 (Michie 2002)* deals with breastfeeding in places of public accommodation. § 489.21 provides that it is a discriminatory practice to deny or attempt to deny public accommodations to a woman because she is breastfeeding a child. § 489.22 provides that a person injured

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<sup>13</sup> To be codified at Ga. Code Ann. § 31-1-9.

by an unlawful discriminatory practice may bring a private cause of action and provides appropriate remedies. § 489.23 exempts the provisions dealing with breastfeeding from the purview of the civil rights commission.

## Indiana

*Ind. Code § 16-35-6 (2003)* allows a woman to breastfeed her child anywhere that the law allows her to be.

## Idaho

*Idaho Code § 2-213(3) (Michie 2003)* permits a nursing mother to postpone her jury service until she is no longer breastfeeding. “The court shall provide that a mother nursing her child shall have service postponed until she is no longer nursing the child.”

## Illinois

*820 Ill. Comp. Stat. Ann. §§ 260/1; 260/5; 260/10; 260/15; 260/19 (West 2001)* deals with nursing mothers in the workplace. The employer is required to provide reasonable break time and private accommodation (other than a toilet stall) each day to an employee who needs to express breast milk for her infant child.

*20 Ill. Comp. Stat. Ann. § 2310/2310/442 (West 2001)* allows the State Department of Public Health to conduct an educational breastfeeding public information campaign.

*20 Ill. Comp. Stat. Ann. § 1305/10-25 (West 2002)* provides that the State Department of Human Services may include a program of lactation support services as part of the benefits and services provided for pregnant and breastfeeding participants in the Women, Infants and Children Nutrition Program. The program may include payment for various breastfeeding-related supplies.

*720 Ill. Comp. Stat. Ann. § 5/11-9 (West 2001)* provides that the breastfeeding of a child is not an act of public indecency.

## Iowa

*Iowa Code Ann. § 607A.5 (West 2002)* permits a mother who is breastfeeding and who is responsible for the daily care of the child and is not regularly employed to be excused from serving on a jury.

*Iowa Code Ann. § 135.30A (West 2002)* provides that a woman may breastfeed the woman’s own child in any public or private location where the mother and the child otherwise are authorized to be present, except the private home or residence of

another if the mother's breastfeeding is likely to be viewed by and affront the owner or any occupant of the private home or residence. A mother may breastfeed her child under this section irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breastfeeding.

## Louisiana

*2002 La. House Concurrent Resolution 35*<sup>14</sup> establishes a joint study concerning the requirement of insurance coverage for outpatient lactation support for new mothers.

*La. Rev. Stat. Ann. 51 § 2247.1 (West 2002)* prohibits discrimination against mothers who breastfeed their babies. Provides that a mother may breastfeed her baby in any place of public accommodation, resort, or amusement, and clarifies that breastfeeding is not a violation of the law.

*2003 La. Acts 369*<sup>15</sup> prohibits any child care facility from discriminating against breastfed babies. Approved by the governor June 18, 2003.

*La. Rev. Stat. Ann. 40 § 2213 (West 2002)* provides qualification requirements and a registry for "lactation consultants." Such a consultant is an allied health care provider who, by meeting eligibility requirements and passing an examination administered by the International Board of Lactation Consultant Examiners (IBLCE), possesses the skills, knowledge, and attitudes to provide breastfeeding assistance to babies and to mothers.

## Maine

*Me. Rev. Stat. Ann. tit. 5, § 4634 (West 2001)* amends the Maine Human Rights Act to declare that a mother has the right to breastfeed her baby in any location, whether public or private, as long as she is otherwise authorized to be in that location.

*Me. Rev. Stat. Ann. tit. 19-a, § 1653 (West 1999)* is intended to protect the health and well being of a nursing infant of separated or divorcing parents. The law adds the situation of whether the mother is breastfeeding an infant under one year of age to the list of factors that a judge must consider in deciding parental rights and responsibilities.

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<sup>14</sup> Provision not codified at this time.

<sup>15</sup> *Id.*

## Maryland

*Md. Code Ann., Tax-Gen. § 11-211(b)(19)(2002)* exempts from the sales tax and from the use tax on the sale of tangible personal property that is manufactured for the purpose of initiating, supporting, or sustaining breastfeeding.

*Md. Code Ann., Health-Gen. § 20-801 (2003)* permits a woman to breastfeed her child in any public or private place under specified circumstances and prohibits restrictions on breastfeeding. A person may not restrict or limit the right of a mother to breast-feed her child.

## Michigan

*Mich. Comp. Laws Ann. §§ 41.181, 67.1(aa), 117.4i, and 117.5h (West 2002)* excludes a woman breastfeeding a baby, whether or not the nipple or areola is exposed during, or incidental to the feeding, from the public nudity laws.

*Mich. Comp. Laws Ann. § 727.27a (West 2002)* concerns child custody. Among the factors to be considered for “parenting time” is whether the child is a nursing child less than six months of age, or less than one year of age if the child receives substantial nutrition through nursing.

## Minnesota

*2000 Minn. Laws Ch. 269*<sup>16</sup> allows a nursing mother, upon request, to be excused from jury service if she is not employed outside of her home and if she is responsible for the daily care of the child.

*Minn. Stat. Ann. § 181.939 (West 2002)* states that an employer must provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child. The employer must make reasonable effort to provide a room or other location where the employee can express her milk in privacy and sanitary conditions.

*Minn. Stat. Ann. § 145.905 (West 2002)* provides that a mother may breastfeed in any location, public, or private, where the mother and child are otherwise authorized to be, irrespective of whether the nipple of the mother’s breast is uncovered during or incidental to the breastfeeding.

*Minn. Stat. Ann. § 617.23 (West 2003)* provides that breastfeeding is exempted from the statutory definition of indecent exposure.

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<sup>16</sup> *Id.*

## Missouri

*Mo. Ann. Stat. §§ 191.915 and 191.918 (West 2002)* allows mothers to breastfeed, with “appropriate discretion,” in any private or public location. Also establishes that all ambulatory surgical centers and hospitals providing obstetrical care are to give new mothers, where appropriate, information on breastfeeding. All obstetrical or gynecological physicians, after January 1, 2000, must give patients information on breastfeeding.

## Montana

*Mont. Code Ann. § 50-19-501 (2002)* provides that the breastfeeding of a child in any location, public or private, cannot be considered a nuisance, indecent exposure, sexual conduct, or obscenity.

## Nevada

*Nev. Rev. Stat. Ann. § 201.210 (Michie 2001)* provides that the breastfeeding of a child by the mother of the child does not constitute an act of open or gross lewdness.

*Nev. Rev. Stat. Ann. § 201.220 (Michie 2001)* provides that the breastfeeding of a child by the mother of the child does not constitute an act of open and indecent or obscene exposure of her body.

*Nev. Rev. Stat. Ann. § 201.232 (Michie 2002)* allows a mother to breastfeed her child in any location where the mother is otherwise authorized to be, irrespective of whether the nipple of the mother’s breast is uncovered during or incidental to the breastfeeding.

## New Hampshire

*N.H. Rev. Stat. Ann. § 132:10-d (2002)* states that breastfeeding a child does not constitute an act of indecent exposure. It also notes that restricting or limiting the right of a mother to breastfeed her child is discriminatory.

## New Jersey

*N.J.Rev. Stat. Ann. § 26:4B-4 (2002)* is a law that guarantees a mother the right to breastfeed her baby in any location of a place of public accommodation, resort or amusement wherein the mother is otherwise permitted. Provides for civil penalties (fines) for violating this law.

## New Mexico

*N.M. Stat. Ann. 28-20-1 (Michie 2002)* states that a mother may breastfeed her child wherever she is authorized to be.

## New York

*N.Y. Civil Rights Law § 79-e (McKinney 2002)* guarantees a mother the right to breastfeed her baby any place she has the right to be, public or private, even if the nipple is exposed during or incidental to breastfeeding.

*N.Y. Corrections Law § 611 (McKinney 2002)* provides that when a woman is committed to a correctional institution and gives birth or is nursing a child in her care under one year of age, the child may accompany/remain with her in the institution.

*N.Y. Penal Law §§ 245.01, 245.02 (McKinney 2002)* exempts breastfeeding from laws governing indecent exposure and from laws prohibiting the promotion of indecent exposure.

## North Carolina

*N.C. Gen. Stat. § 14-190.9 (1999)* states that a breastfeeding mother is not in violation of indecent exposure laws at any time.

## Oregon

*Or. Rev. Stat. § 109.001 (1999)* allows a woman to breastfeed in a public place.

*Or. Rev. Stat. §§ 10.050 (1999)* permits a breastfeeding woman to be excused from acting as a juror, upon the approval of a written request.

## Puerto Rico<sup>17</sup>

*23 P.R. Laws Ann. § 43-1 (2002)* requires that shopping malls, airports, and government centers that serve the public must have accessible areas designed for the breastfeeding of infants. Provision is made for compliance for newly designed and existing buildings.

*29 P.R. Laws Ann. §§ 478, 478a-478h (2002)* provides comprehensive regulation of breastfeeding in the workplace. The statute defines terms, provides time periods for expressing milk, details obligations for employers, and sets penalties for noncomplying employers.

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<sup>17</sup> While not a State, Puerto Rico is included in this compilation.

## Rhode Island

*R.I. Gen. Laws § 23-72-1 (2001)* guarantees that Department of Health notices on the consumption of fish contaminated with mercury are made available to consumers and explain the dangers to women who expect to be pregnant, are pregnant, or are breastfeeding.

*R.I. Gen. Laws § 11-45-1 (2000)* excludes mothers engaged in breastfeeding from disorderly conduct laws.

*R.I. Gen. Laws § 23-13.2-1 (2003)* sets out workplace policies protecting a woman's choice to breastfeed. Appropriate definitions are provided.

## Tennessee

*Tenn. Code Ann. § 50-1-305 (1999)* requires employers to provide reasonable, unpaid break time to an employee to express breast milk and allows employers to provide a room or other private location, other than a toilet stall, for an employee to express breast milk.

## Texas

*Tex. Health & Safety Code Ann. § 161.071 (Vernon 2002)* relates to the provision of donor human milk to certain infants under the medical assistance program.

*Tex. Health & Safety Code Ann. § 165.001 et seq. (Vernon 2001)* authorizes a woman to breastfeed her child in any location and provides for the use of a "mother-friendly" designation for employers who have policies supporting worksite breastfeeding.

## Utah

*Utah Code Ann. § 17-15-25 (1999)* states that city and county governing bodies may not inhibit a woman's right to breastfeed in public.

*Utah Code Ann. § 76-10-1229.5 (1999)* states that a breastfeeding woman is not in violation of any obscene or indecent exposure law.

*Utah Code Ann. § 76-9-702 (2002)* provides that a woman's breastfeeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd or grossly lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

*Utah Code Ann. § 10-8-41 (1999)* provides that a woman's breastfeeding, including breastfeeding in any place where the woman otherwise may rightfully be,

does not under any circumstance constitute an obscene or lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

*Utah Code Ann. § 10-8-51 (1999)* provides that a woman's breastfeeding, including breastfeeding in any location where she otherwise may rightfully be, does not under any circumstance constitute a lewd or indecent act, irrespective of whether or not the breast is covered during or incidental to feeding.

## Vermont

*Vt. Stat. Ann. tit. 9, § 4502(j)(2002)* states that breastfeeding a child is an important, basic and natural act of nurture that should be encouraged in the interest of enhancing maternal, child and family health. The law allows a mother to breastfeed her child in any place of public accommodation in which the mother and child would otherwise have a legal right to be. The law directs the human rights commission to develop and distribute materials and to provide information regarding a woman's legal right to breastfeed her child in a place of public accommodation.

## Virginia

*Va. Code § 2.2-1147.1 (2002)* guarantees a woman the right to breastfeed her child on any property owned, leased, or controlled by the state.

*Va. Code § 18.2-387 (1996)* exempts breastfeeding a child in any public place or place where others are present from indecent exposure statute.

*Va. Joint Resolution # 248 (1994)*<sup>18</sup> requests the Department of Medical Assistance Services to review breastfeeding issues, including lactation education and supplies for Medicaid recipients. Also set forth are the benefits of breastfeeding.

*H.J.Res. 145 (2002)*<sup>19</sup> encourages employers to recognize the benefits of breastfeeding and to provide unpaid break time and appropriate space for employees to breastfeed or express milk.

## Washington

*Wash. Rev. Code Ann. § 9A.88.010 (2002)* provides that the act of breastfeeding or expressing breast milk is not indecent exposure.

*Wash. Rev. Code Ann. § 43.70.640 (West 2002)* exempts breastfeeding from indecent exposure provisions. It also provides for employer/infant friendly promotions relating to work places with facilities conducive to breastfeeding infants.

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<sup>18</sup> Apparently, this resolution is not codified in the Virginia Code.

<sup>19</sup> Provision not codified at this time.



## Wisconsin

*Wisc. Stat. Ann. §§ 944.17(3), 944.20(2) and 948.10(2) (West 2001)* provides that breastfeeding mothers are not in violation of criminal statutes of indecent or obscene exposure.

## Wyoming

2003 *Wy. H.J.R. 5*<sup>20</sup> (signed by the governor on February 21, 2003) encourages breastfeeding and recognizes the importance of breastfeeding to maternal and child health. The resolution commends public and private employers who provide accommodations for breastfeeding mothers.

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<sup>20</sup> *Id.*

### Comparative Chart of Existing State Breastfeeding Legislation

<b>States</b>	<b>No Legislation</b>	<b>Mothers permitted to breastfeed in any public or private location</b>	<b>Breastfeeding exempted from public indecentcy laws</b>	<b>Laws relating to breastfeeding in the workplace</b>	<b>Laws exempting breastfeeding mothers from jury duty</b>	<b>Implemented or encouraged development of a breastfeed- ing awareness education campaign</b>	<b>Optional State enforcement or implementa- tion of various breastfeed- ing programs</b>
<b>ALABAMA</b>	<b>X</b>						
<b>ALASKA</b>			<b>X</b>				
<b>ARIZONA</b>	<b>X</b>						
<b>ARKANSAS</b>	<b>X</b>						
<b>CALIFORNIA</b>		<b>X</b>		<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>
<b>COLORADO</b>	<b>X</b>						
<b>CONNECTICUT</b>		<b>X</b>		<b>X</b>			
<b>DELAWARE</b>		<b>X</b>					
<b>DISTRICT OF COLUMBIA</b>	<b>X</b>						
<b>FLORIDA</b>		<b>X</b>	<b>X</b>				

<b>States</b>	<b>No Legislation</b>	<b>Mothers permitted to breastfeed in any public or private location</b>	<b>Breastfeeding exempted from public indecent laws</b>	<b>Laws relating to breastfeeding in the workplace</b>	<b>Laws exempting breastfeeding mothers from jury duty</b>	<b>Implemented or encouraged development of a breastfeed- ing awareness education campaign</b>	<b>Optional State enforcement or implementa- tion of various breastfeed- ing programs</b>
<b>GEORGIA</b>		<b>X</b>		<b>X</b>			<b>X</b>
<b>HAWAII</b>		<b>X</b>		<b>X</b>			
<b>IDAHO</b>					<b>X</b>		
<b>ILLINOIS</b>			<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>
<b>INDIANA</b>		<b>X</b>					
<b>IOWA</b>					<b>X</b>		
<b>KANSAS</b>	<b>X</b>						
<b>KENTUCKY</b>	<b>X</b>						
<b>LOUISIANA</b>		<b>X</b>					
<b>MAINE</b>		<b>X</b>					
<b>MARYLAND</b>		<b>X</b>					
<b>MASSACHUSETTS</b>	<b>X</b>						

<b>States</b>	<b>No Legislation</b>	<b>Mothers permitted to breastfeed in any public or private location</b>	<b>Breastfeeding exempted from public indecent laws</b>	<b>Laws relating to breastfeeding in the workplace</b>	<b>Laws exempting breastfeeding mothers from jury duty</b>	<b>Implemented or encouraged development of a breastfeed- ing awareness education campaign</b>	<b>Optional State enforcement or implementa- tion of various breastfeed- ing programs</b>
<b>MICHIGAN</b>			<b>X</b>				
<b>MINNESOTA</b>	<b>X</b>			<b>X</b>	<b>X</b>		<b>X</b>
<b>MISSISSIPPI</b>							
<b>MISSOURI</b>		<b>X</b>				<b>X</b>	
<b>MONTANA</b>			<b>X</b>				
<b>NEBRASKA</b>	<b>X</b>						
<b>NEVADA</b>			<b>X</b>				
<b>NEW HAMPSHIRE</b>			<b>X</b>				
<b>NEW JERSEY</b>		<b>X</b>					
<b>NEW MEXICO</b>		<b>X</b>					
<b>NEW YORK</b>		<b>X</b>					
<b>NORTH CAROLINA</b>		<b>X</b>	<b>X</b>				

<b>States</b>	<b>No Legislation</b>	<b>Mothers permitted to breastfeed in any public or private location</b>	<b>Breastfeeding exempted from public indecent laws</b>	<b>Laws relating to breastfeeding in the workplace</b>	<b>Laws exempting breastfeeding mothers from jury duty</b>	<b>Implemented or encouraged development of a breastfeed- ing awareness education campaign</b>	<b>Optional State enforcement or implementa- tion of various breastfeed- ing programs</b>
<b>NORTH DAKOTA</b>	<b>X</b>						
<b>OHIO</b>	<b>X</b>						
<b>OKLAHOMA</b>	<b>X</b>						
<b>OREGON</b>		<b>X</b>			<b>X</b>		
<b>PENNSYLVANIA</b>	<b>X</b>						
<b>PUERTO RICO</b>				<b>X</b>			
<b>RHODE ISLAND</b>			<b>X</b>				
<b>SOUTH CAROLINA</b>	<b>X</b>						
<b>SOUTH DAKOTA</b>	<b>X</b>						
<b>TENNESSEE</b>				<b>X</b>			
<b>TEXAS</b>		<b>X</b>		<b>X</b>			
<b>UTAH</b>			<b>X</b>				

States	No Legislation	Mothers permitted to breastfeed in any public or private location	Breastfeeding exempted from public indecency laws	Laws relating to breastfeeding in the workplace	Laws exempting breastfeeding mothers from jury duty	Implemented or encouraged development of a breastfeeding awareness education campaign	Optional State enforcement or implementation of various breastfeeding programs
VERMONT		X				X	
VIRGINIA		X	X				
WASHINGTON			X	X			
WEST VIRGINIA	X						
WISCONSIN			X				
WYOMING—the breastfeeding law of Wyoming does not fit into any of these categories.	See note at left.						

## Federal Legislation

### *Enacted Legislation*

The most recently enacted federal legislation dealing with breastfeeding in a public location is contained in the Consolidated Appropriations Act of 2004, which became law on January 23, 2004. It specifically deals with breastfeeding in a Federal building or on Federal property.

Sec. 629. Notwithstanding any other provision of law, a woman may breastfeed her child at any location in a Federal building or on Federal property, if the woman and her child are otherwise authorized to be present at the location.<sup>21</sup>

This language repeats similar language which had been contained in prior appropriations legislation.<sup>22</sup>

### *Pending Legislation*

In the 108<sup>th</sup> Congress, two bills have been introduced dealing with breastfeeding – S. 418 and H.R. 2790.

S. 418,<sup>23</sup> the proposed “Pregnancy Discrimination Act Amendments of 2001,” was introduced by Senator Olympia J. Snowe on February 14, 2003.<sup>24</sup> The bill would amend Section 701(k) of the Civil Rights Act of 1964<sup>25</sup> by inserting the term “breastfeeding” after the term “childbirth,” and by adding at the end, a new section which would state: “In this subsection, the term ‘breastfeeding’ means the feeding of a child directly from the breast or the expression of milk from the breast by a lactating woman.” The practical effect of these amendments would appear to include breastfeeding (including the expression of milk) within the definitions of “because of sex” and “on the basis of sex” for the purposes of the discrimination prohibitions of the Act.

On February 14, 2003, the bill was referred to the Senate Committee on Health, Education, Labor, and Pensions. At the present time, the bill has not emerged from Committee consideration.

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<sup>21</sup> Pub. L. 108-199, 108<sup>th</sup> Cong., 2<sup>nd</sup> Sess. (2004). Apparently not codified.

<sup>22</sup> Pub. L. 108-7, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. § 630 (2003); Pub. L. 106-58, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. § 647 (1999). Apparently not codified.

<sup>23</sup> 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003).

<sup>24</sup> The provisions of S. 418 are substantially similar to the provisions of S. 256, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2001). S. 256 was introduced on February 6, 2001, and on the same day was referred to the Senate Health, Education, Labor and Pensions Committee. S. 256 did not emerge from Committee consideration.

<sup>25</sup> 42 U.S.C. § 2000e(k).

H.R. 2790,<sup>26</sup> the proposed “Breastfeeding Promotion Act,” was introduced by Representative Carolyn B. Maloney on July 18, 2003.<sup>27</sup> The bill would provide an amendment to the Civil Rights Act of 1964 (“Act”) to include lactation (including expression of milk) within the definitions of “because of sex” or “on the basis of sex” for the purposes of the Act. The bill would amend the Internal Revenue Code (IRC) to allow a limited credit to employers for expenses incurred in enabling employed nursing mothers to breastfeed. The bill would also direct the Secretary of Health and Human Services to: 1) put into effect a performance standard for breast pumps irrespective of the class to which the breast pumps have been classified under the Federal Food, Drug, and Cosmetic Act; and 2) issue a compliance policy which would assure that women who want to breastfeed a child are given full and complete information respecting breast pumps. The bill would expand the IRC definition of medical care so as to include qualified breastfeeding equipment and services.

On July 18, 2003, the bill was referred to the House Ways and Means Committee, the House Education and Workforce Committee, and the House Energy and Commerce Committee. On July 23, 2003, it was referred to the Subcommittee on Health of the House Energy and Commerce Committee and on August 13, 2003, it was referred to the Subcommittee on Employer-Employee Relations of the House Education and the Workforce Committee.

In addition to these bills, a few bills have been introduced which make reference, in a somewhat indirect way to breastfeeding. These bills deal with mercury in dental filling disclosure,<sup>28</sup> prevention of HIV transmission,<sup>29</sup> and mercury exposure through seafood consumption.<sup>30</sup> As they are only indirectly related to the breastfeeding issues discussed in this report, they are not summarized.

## Conclusion

In recent years, there has been an expansion in the practice of breastfeeding. As a consequence of this growing trend, thirty-four States and Puerto Rico have enacted legislation associated with breastfeeding. The laws vary considerably in their scope and in their coverage. However, these State laws may be generally classified into six broad categories. Nineteen States permit mothers to breastfeed in any public or private location where the mother is legally entitled to be: California, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Louisiana, Maine, Maryland, Missouri, New Jersey, New Mexico, New York, North Carolina, Oregon, Texas, Vermont, and Virginia. Thirteen States exempt breastfeeding from public indecency laws: Alaska,

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<sup>26</sup> 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003).

<sup>27</sup> The provisions of the bill are similar to those of H.R. 285, 107<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2001) which was introduced by Representative Maloney on January 30, 2001. H.R. 285 did not emerge from Committee consideration.

<sup>28</sup> H.R. 1680, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003).

<sup>29</sup> S. 859, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003); H.R. 2049, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003).

<sup>30</sup> S. 1939, 108<sup>th</sup> Cong., 1<sup>st</sup> Sess. (2003).



Florida, Illinois, Michigan, Montana, Nevada, New Hampshire, North Carolina, Rhode Island, Utah, Virginia, Washington, and Wisconsin. Nine States and Puerto Rico have laws related to breastfeeding in the workplace: California, Connecticut, Georgia, Hawaii, Illinois, Minnesota, Tennessee, Texas, and Washington. Five States exempt breastfeeding mothers from jury duty: California, Idaho, Iowa, Minnesota, and Oregon. Four States have implemented or encouraged the development of a breastfeeding awareness education campaign: California, Illinois, and Missouri, and Vermont. Four States have certain optional or voluntary compliance provisions: California, Georgia, Illinois, and Minnesota.

During the past few years, Congress has enacted provisions which affirm a mother's right to breastfeed on Federal property or in a Federal building, if the mother and child are authorized to be in that location. These provisions have been contained in major appropriations measures and are not well known to the general public.

Federal legislation relating to breastfeeding has been introduced in the 108<sup>th</sup> Congress. Both S. 418 and H.R. 2790 would amend the Civil Rights Act of 1964 to protect breastfeeding by new mothers. In addition, H.R. 2790 would provide for a performance standard for breast pumps; and would provide tax incentives to encourage employers to permit breastfeeding. Neither bill has emerged from Committee consideration at this time. Other bills have been introduced which make rather indirect references to breastfeeding and deal with such issues as mercury in dental fillings.